

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:05-CR-42 JCM (VCF)

Plaintiff(s),

ORDER

v.

NICOLE YVETTE VAN TREASE, et al.,

Defendant(s).

Presently before the court is the government's ex parte application for a writ of continuing garnishment (ECF No. 107) and the court's writ of continuing garnishment. (ECF No. 108). Antoinette Broedel filed under seal an affidavit of exemptions and request for hearing. (ECF No. 110).

I. Legal Standard

The court shall issue an appropriate writ of garnishment if the court determines that the requirements of 28 U.S.C. § 3205 have been met. 28 U.S.C. § 3205(c)(1). Section 3205 requires that the government include in its application for a writ of garnishment the fact that "not less than [thirty] days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due." 28 U.S.C. § 3205(b)(1).

II. Discussion

On July 11, 2005, the court entered judgment against Broedel in the amount of \$9,740.00 in restitution and \$100.00 in special assessment fees. (ECF No. 34). On August 12, 2021, the government applied for a writ of garnishment for the remaining balance of \$9,847.54. (ECF No. 107).

1 In its application, the government claimed that more than thirty days had elapsed since it
 2 demanded payment from Broedel. (*Id.* at 2). However, the government's provided address for
 3 Broedel was 6151 Mountain Vista St., **Apt. #162**, Henderson, NV 89014. (*Id.*). The
 4 government also originally included that same address in its certificate of service for its notice of
 5 appearance, (ECF No. 106), but later certified that it served that same notice of appearance on
 6 Broedel at 2001 Ramrod Ave., Spt. #2711, Henderson, NV 89014. (ECF No. 109).

7 In Broedel's request for a hearing, Broedel claims to have never received the demand for
 8 payment. (ECF No. 108 at 3). Attached to her request is Broedel's state driver's license, which
 9 lists her address at 6151 Mountain Vista St., **Apt. #1621**, Henderson, NV, 89014. (*Id.* at 6). The
 10 government does not include that address anywhere in its application or certificates of service.

11 Because the government failed to send a demand for payment to the correct address,
 12 Broedel could not respond within to the thirty-day deadline which the government is required to
 13 wait before applying for a writ of garnishment. *See* 28 U.S.C. § 3205(b)(1), (c)(1).

14 Thus, the court improperly granted the writ of continuing garnishment (ECF No. 108)
 15 and, as the waiting period for a demand of payment has not passed, the government's application
 16 for a writ of continuing garnishment (ECF No. 107) and Broedel's request for a hearing (ECF
 17 No. 110) are not ripe.

18 **III. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the court's writ of
 21 continuing garnishment (ECF No. 108) be, and the same hereby is, QUASHED.

22 IT IS FURTHER ORDERED that the government's application for a writ of continuing
 23 garnishment (ECF No. 107) and Broedel's request for a hearing (ECF No. 110) be, and the same
 24 hereby are, DENIED as unripe.

25 DATED October 6, 2021.

26 
 27 UNITED STATES DISTRICT JUDGE